

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2887 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Point Nos.1 to 5 - No.

SOMA AMRA HARIJAN

Versus

ADDL.CHIEF SECRETARY

Appearance:

MR BP MUNSHI for Petitioner
MR.SOMPURA,AGp. for Respondent No. 1
SERVED BY RPAD for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/12/96

ORAL JUDGEMENT

This petition arises of grant of a piece of land bearing plot No.44/2 admeasuring 66.6 sq.yds being part of land survey No.1350 situated at Jamnagar to the petitioner. Under order dated 27th April 1967 the Collector, Jamnagar, made grant of the said plot of land for construction of a residential house in favour of the petitioner. It appears that since the grant of the said land the petitioner shifted from Jamnagar to village

Khilos in Taluka Jamnagar. Respondent No.4 was found to be in possession of the said land and she had constructed a house thereupon. The Deputy Collector, Jamnagar, therefore, initiated action for breach of condition of grant against the petitioner and the respondent No.4. Respondent No.4 appeared before the Deputy Collector and submitted that she had purchased the said plot of land with the construction thereupon from the petitioner some 18 years ago. The petitioner did not appear before the Deputy Collector. Considering this statement the Deputy Collector held that the land was transferred in breach of condition of grant and under his order dated 27th September, 1991, forfeited the land to the Government and ordered summary eviction of respondent No.4

Feeling aggrieved, respondent No.4 preferred an appeal before the Collector who considering the possession of the respondent No.4 for nearly 18 years, directed that the grant of said plot of land be made in favour of respondent No.4 on payment of price. Against this order of the Collector, the petitioner preferred a revision application before the Government. The Government under its order dated 26-2-96 dismissed the application and confirmed the order of the Collector.

Feeling aggrieved, the petitioner has preferred this petition. Learned Advocate Mr.Munshi has appeared on behalf of the petitioner and has contended that the petitioner was not offered an opportunity of hearing either before the Deputy Collector or before the Collector. He has further contended that the petitioner had never transferred the land in favour of the respondent No.4 as alleged by respondent No.4. He has submitted that the respondent No.4 had taken undue advantage of the absence of the petitioner and had encroached upon the said plot of land. He has, therefore, contended that the impugned orders made by the Government as well as the lower authorities have been made in violation of the principles of natural justice and the findings recorded by the authorities below are based on no evidence. He, therefore, prays that the impugned order of the Tribunal as well as the lower authorities be quashed and set aside.

Learned Assistant Government Pleader Mr.Sompura has appeared for the State. He has contested the petition and contended that in any view of the matter it is undisputed that the petitioner has not been residing on the said piece of land for a long time and thus he has committed the breach of the terms and conditions of the grant. Said land is, therefore, liable to be forfeited

to the Government.

Be that as it may, it is undisputed that no notice has been served upon the petitioner either by the Deputy Collector or by the Collector. Instead of the petitioner one Dosa Amra was impleaded to the said proceedings and a notice was attempted to be served upon the said Dosa Amra. Deputy Collector, Jamnagar, has also filed an affidavit in reply to the petition and has conceded that no notice was served upon the petitioner of the proceedings initiated against him. Besides, the respondent No.4 has not produced any evidence in support of her contention that the said plot of land was purchased by her. Thus the findings recorded by the authorities below are based on no evidence. The Government has, while considering the revision application preferred by the petitioner, has failed to consider these vital issues and has erroneously confirmed the order made by the Collector.

In view of the above discussion, the impugned order of the Government made on 27-2-96, Annexure- to the petition, the order of the Collector dated 3rd June, 1993 Annexure-G to the petition and the order of the Deputy Collector made on 27th September 1991 Annexure-E to the petition are hereby quashed and set aside. It is clarified that the competent authority shall be at liberty to initiate action against the petitioner for breach of condition of grant, if permissible under law.

Petition is allowed. Rule is made absolute.
There shall be no order as to costs.
